

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TONY ANTHONY DAY, Plaintiff, vs. DR. JON ERPENBACH, Mental Health Doctor, Minnehaha County Jail; Defendant.	4:14-CV-04047-KES ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS
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Defendant, Dr. John Erpenbach, moves to dismiss, pursuant to Federal Rule of Civil Procedure 12(c), the complaint that was filed against him. Plaintiff, Tony Anthony Day, has not responded, and the time for response has passed.

When the court screened Day's complaint, it construed the complaint as asserting a claim against Erpenbach alleging deliberate indifference to Day by denying him the dosage of a medication he allegedly required for his mood disorder. Dr. Erpenbach was sued only in his official capacity. Day has now been transferred from the Minnehaha County Jail to a federal correctional facility in Waymart, Pennsylvania. Thus, Day's claims for declaratory or injunctive relief are moot. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

With regard to any claim for monetary damages, Day's complaint does not allege an unlawful policy, practice, or custom of the jail related to mental health care and treatment at the Minnehaha County Jail. He also does not

allege a policy, practice, or custom of unconstitutional action on the part of Dr. Erpenbach. Rather, Day simply alleges an isolated instance of personal injury or harm. Isolated and purely personal incidents of allegedly unconstitutional action do not provide a legally sufficient basis for imposing official capacity liability. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985).

Additionally, the complaint fails to allege facts establishing that Dr. Erpenbach is a final policy maker. Only a public official who possesses final policymaking authority is properly sued in his official capacity. *See McGautha v. Jackson County, Mo., Collections Dep't*, 36 F.3d 53, 56 (8th Cir. 1994). For all these reasons, Erpenbach is entitled to dismissal of the claims without prejudice. It is

ORDERED that Dr. John Erpenbach's motion for judgment on the pleadings (Docket 19) is granted.

Dated November 6, 2014.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE